

3-1-1989

Table of Contents

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Table of Contents, 1989 BYU L. Rev. (1989).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1989/iss1/16>

This Frontmatter is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Brigham Young University Law Review

VOLUME 1989

NUMBER 1



EDITORIAL OFFICES: The *Brigham Young University Law Review* is published at the J. Reuben Clark Law School, Provo, Utah 84602, by the Brigham Young University Law Review. All communications should be sent to the editorial offices.

Views expressed herein are to be attributed to their authors and not to the Law Review or Brigham Young University unless otherwise indicated.

SUBSCRIPTIONS: The *Brigham Young University Law Review* is published quarterly. The subscription rate is \$20 for one year, \$36 for two years, and \$50 for three years. Single issues may be obtained for \$5 per issue, and reprints of most articles and comments for \$2 per copy.

Third-class postage paid at Provo, Utah, and at additional mailing office. Send address changes to *Brigham Young University Law Review*, J. Reuben Clark Law School, Room 453, Provo, Utah 84602.

Copyright: © Brigham Young University Law Review, 1989.

BRIGHAM YOUNG UNIVERSITY

J. REUBEN CLARK LAW SCHOOL FACULTY

- BACKMAN, JAMES H. (1974), Professor of Law. A.B., 1969, Harvard College; J.D., 1972, University of Utah.
- BURNS, JEAN W. (1986), Associate Professor of Law. B.A., 1970 Vanderbilt University; J.D., 1973, University of Chicago Law School.
- DAVIS, RAY JAY (1981), Professor of Law. B.S., 1948, Idaho State University; J.D., 1953, Harvard University; LL.M., 1956, Columbia University.
- DURHAM, W. COLE, JR. (1976), Professor of Law. A.B., 1972, Harvard College; J.D., 1975, Harvard University.
- FARMER, LARRY C. (1977), Professor of Law. B.S., 1968, University of Washington; Ph.D., 1975, Brigham Young University.
- FLEMING, J. CLIFTON, JR. (1974), Associate Dean of the Law School and Professor of Law. B.S., 1964, Brigham Young University; J.D., 1967, George Washington University.
- FLOYD, C. DOUGLAS (1980), Professor of Law. B.S., 1964, Massachusetts Institute of Technology; LL.B., 1967, Stanford University.
- GOLDSMITH, MICHAEL (1985), Professor of Law. B.S., 1972, J.D., 1975, Cornell University.
- GORDON, JAMES D., III (1984), Associate Professor of Law. B.A., 1977, Brigham Young University; J.D., 1980, University of California, Berkeley.
- HAFEN, BRUCE C. (1985), Dean of the Law School and Professor of Law. A.A., 1960, Dixie College; B.A., 1966, Brigham Young University; J.D., 1967, University of Utah.
- HANSEN, H. REESE (1974), Associate Dean of the Law School and Professor of Law. B.S., 1964, Utah State University; J.D., 1972, University of Utah.
- HAWKINS, CARL S. (1973), Guy Anderson Professor of Law. A.B., 1948, Brigham Young University; J.D., 1951, Northwestern University.
- JACOBS, EUGENE B. (1980), Professor Emeritus of Law. B.A., 1949, J.D., 1951, University of California, Berkeley.
- KIMBALL, EDWARD L. (1973), Ernest L. Wilkinson Professor of Law. B.S., 1953, LL.B., 1955, University of Utah; LL.M., 1959, S.J.D., 1962, University of Pennsylvania.
- LEE, REX E. (1973), George Sutherland Professor of Law. B.A., 1960, Brigham Young University; J.D., 1963, University of Chicago.
- LUNDBERG, CONSTANCE K. (1982), Professor of Law. B.A., 1968, Arizona State University; J.D., 1972, University of Utah.
- NEELEMAN, STANLEY D. (1978), (on leave) Professor of Law. B.A., 1967, Westminster College; M.A., 1969, George Washington University; J.D., 1972, University of Denver.
- PARKER, DOUGLAS H. (1975), Professor of Law. B.A., 1949, J.D., 1952, University of Utah.
- RIGGS, ROBERT E. (1975), Professor of Law. B.A., 1952, M.A., 1953, University of Arizona; Ph.D., 1955, University of Illinois; LL.B., 1963, University of Arizona.
- SABINE, JAMES E. (1976), Visiting Professor of Law. B.A., 1930, University of Utah; J.D., 1937, University of California, Berkeley.
- THOMAS, DAVID A. (1974), Professor of Law and Law Librarian. B.A., 1967, Brigham Young University; J.D., 1972, Duke University.
- WARDLE, LYNN D. (1978), Professor of Law. B.A., 1971, Brigham Young University; J.D., 1974, Duke University.
- WELCH, JOHN W. (1980), Professor of Law. B.A., 1970, M.A., 1970, Brigham Young University; J.D., 1975, Duke University.
- WILKINS, RICHARD G. (1984), Associate Professor of Law. B.A., 1976, J.D., 1979, Brigham Young University.
- WILLIAMS, GERALD R. (1973), Professor of Law. B.A., 1966, Brigham Young University; J.D., 1969, University of Utah.
- WOOD, MARY ANN Q. (1976), Professor of Law. B.A., 1966, Brigham Young University; J.D., 1976, George Washington University.
- WOOD, STEPHEN G. (1976), Professor of Law. B.A., 1966, J.D., 1969, University of Utah; J.S.D., 1980, Columbia University.
- WORTHEN, KEVIN J. (1987) Assistant Professor of Law. B.A., 1979, Brigham Young University; J.D. 1982 Brigham Young University.

PART-TIME FACULTY

AMES, WALTER L.
BRIAN, PAT B.
COLLINS, KENT H.
ELEGANTE, JAMES M.

GUNN, STEVEN H.
JONES, G. KEVIN
MABEY, RALPH R.
OWEN, STANFORD

Brigham Young University Law Review

VOLUME 1989

NUMBER 1

Editor in Chief
DAN H. MATTHEWS

Executive Editors
DAVID P. BROOKS
LEE RADFORD

Lead Articles Editors
CRAIG L. GRIFFIN
GREGORY M. HESS
DAVID J. TUCKFIELD

Articles Editors
ADAM S. AFFLECK
JAMES E. ELLSWORTH
KEN JORGENSEN
STEPHEN B. RICHARDS
BRENT WAITE

Managing Editor
WILLIAM D. MARSH

Lead Note & Comment Editors
HENRY J. EYRING
J. KYLE SCORESBY

Research Editor
PATRICIA OWEN

Note & Comment Editors
BRADLEY R. BECKSTROM
MICHAEL H. COONS
DAVID B. HANCOCK
KONRAD S. LEE
DAVID M. McGRATH
ALLAN O. WALSH

Members

ERIC CHESTER AWERKAMP
KATHRYN OGDEN BALMFORTH
RICHARD A. BEDNAR
STEVEN BEDNAR
STEVEN W. BENNETT
D. LEE DECKER
MICHAEL R. EVANS
MARK A. HUTCHISON
TODD KERR
REID W. LAMBERT
DEAN LEFLER
STEPHEN L. LUNDWALL

LINDA WATERS MAGLEBY
JAMES McLAREN
BRIAN NUFFER
JAMES E. PRINCE
GREG SLATER
KIM STANGER
JAMES THOMPSON
KARL TILLEMANN
JON EVAN WADDOUPS
STUART F. WEED
MARK WITHERS
STEVEN J. WRIGHT

Faculty Advisor
W. COLE DURHAM, JR.

Secretary
LINDA MORISON

Brigham Young University Law Review

VOLUME 1989

NUMBER 1

TABLE OF CONTENTS

In Memorium: Woodruff J. Deem

Edward L. Kimball 1

ARTICLES

Reconciling State Oil and Gas Conservation
Regulation with the Natural Gas Act: New
Statutory Revelations

David E. Pierce 9

The Court, the Academy, and the Constitution:
A Comment on *Bowers v. Hardwick* and its
Critics

Earl M. Maltz 59

Circumventing Racism: Confronting the Problem
of the Affirmative Action Ideology

Christopher T. Wonnell 95

The Effects of the Sixteenth and Seventeenth
Amendments in Changing the Role of the States
in the Federal System

Scott G. Crowley 145

COMMENTS

Standing and Liability of State and Local
Government Under the Civil Rico Statute

175

Punitive Damages in Utah—Time for a Clear
Standard

217

NOTES

Does the Tenth Amendment Pose Any Judicial
Limit on the Commerce Clause After *Garcia v.*
San Antonio Metropolitan Transit Authority
and *South Carolina v. Baker*?

231

Intergovernmental Tax Immunity Beyond *South*
Carolina v. Baker

249

The Psychotherapist's Calamity: Emerging
Trends in the *Tarasoff* Doctrine

261

Maintaining Public Confidence in the Integrity of the Judiciary: <i>State Bar of Nevada</i> <i>v. Claiborne</i>	283
Making Prior Restraint an Enforcement Tool of the Establishment Clause: <i>Stein v. Plainwell</i> <i>Community Schools</i>	305
Alien Membership in the Constitutional Compact: Fourth Amendment Reasonableness in Foreign Lands— <i>United States v. Verdugo-</i> <i>Urquidez</i>	319
The Effect of <i>In re Data Access Systems</i> <i>Securities Litigation</i> on the Statute of Limitations Period for Section 10(b) or Rule 10b-5 Actions Brought in Utah	337
COMMENT	
The Post-Expiration Duty to Arbitrate: Disregarding the <i>Nolde</i> Presumption After an Impasse in Negotiations	349